

# Protecting corporate reputation

A short guide

**TaylorWessing**

Helping you protect your corporate reputation.

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# Protecting your corporate reputation

Successful organisations have always sought to protect their corporate reputations, but the range and nature of threats has radically changed in recent times.

Today, anyone with a phone or computer can be a critic or campaigner. Opinions are posted and amplified through social media in seconds, triggering damaging news stories.

Cyberattacks and product safety have become front page news, and follow-on litigation can cause prolonged bad press. Poor internal governance can end in a very public investigation. Aggrieved employees, activists or competitors can hurt your brand.

This guide identifies seven key areas of risk which, if ignored, could trigger a corporate reputation crisis and ultimately destroy your business. It then sets out the options available to protect your corporate reputation, from taking anticipatory steps to prevent long term reputational damage, to dealing with a crisis and its consequences.

Best wishes,



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“ [the team] are fabulous: great to deal with, very efficient and they know their area inside out.

Chambers 2020

# Media



## Publication or broadcast of damaging allegations

A negative story is like a bird call: one can trigger several more, and before too long, that's all that can be heard.

The resulting media cacophony can be enough to damage your corporate reputation, no matter how strong it may be. That's where our experienced legal team can help. By getting ahead of the story, often working together with PRs, our experts can help protect your brand before, during and after a media related incident, to ensure that a lone headline doesn't lead to a major headache.

### Pre-publication or broadcast

The ideal time to intervene, influence or impede unflattering news coverage is prior to publication or broadcast. Our expertise allows us to:

- ▶ Understand online risks, via third party auditors, PRs or otherwise, and monitor the dark web.
- ▶ Anticipate, together with PRs, media issues ahead of reputational events, such as succession, online reviews, hiring, firing or floating, acquisitions, social media campaigns, investigations, shareholder activism, #metoo, coroners' inquests and litigation, and then prepare a protection strategy.
- ▶ Plan exit routes from endorsements to limit damage by association.
- ▶ Consider and review the remit and enforceability of NDAs.
- ▶ Legally check company statements before publication.
- ▶ Anticipate threats to, and protect the reputations of, key individuals to avoid collateral damage to the company.



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### Media crisis

Sometimes it's not possible to pre-empt the publication or broadcast of damaging allegations until the last minute.

Our experts can provide quick, decisive advice on how to mitigate damage by:

- ▶ Establishing facts and providing urgent advice.
- ▶ Applying legal pressure to stop or alter stories, or to put your side of the story across.
- ▶ Putting the media on notice of falsities and legal claims.
- ▶ Preventing the publication of confidential information (or the private information of directors or employees).
- ▶ Targeting or unmasking sources to stop further disclosures.
- ▶ Stopping competitors from maliciously spreading false stories.

### Post-publication or broadcast

If a damaging story is published or broadcast, you'll need to repair the damage. Our lawyers are well-versed in a variety of post-publication or broadcast measures, such as:

- ▶ Containing further circulation of news to limit damage.
- ▶ Removing or correcting the original story, obtaining the publication of an apology or a clarification, damages and costs.
- ▶ Considering the rights of individuals within the business, or IP rights, to have online content removed.
- ▶ Providing advice on a claim if the publisher or broadcaster won't budge and proceedings.
- ▶ Making a regulatory complaint as an alternative to legal action.
- ▶ Providing legal advice on public appearances during investigations or before Parliament.



## Cyberattacks and data breaches or misuse

Every day, your business is at risk of a cyberattack. Are you doing everything you can to keep your data safe?

It's not just cyberattacks you need to be wary of. The GDPR has brought with it tougher data-related obligations for businesses, the threat of larger fines and greater danger of civil liability.

The mistreatment of data can quickly escalate into a crisis situation that boils over into regulatory or even parliamentary intervention. That's why we've developed a plan to help you prevent a crisis situation from occurring, or to manage it in the most effective way, to protect both your data and your reputation:

### Pre-emption

- ▶ Pre-emptive data security legal audits and GDPR compliance advice.
- ▶ Preparing and embedding information security management systems and data management policies.
- ▶ Internal training and advisory protocols.
- ▶ Preparing a breach response plan and carrying out table-top breach response exercises, cyber readiness and risk assessments with information security specialists.
- ▶ Monitoring for online compromises, using **TW: detect** to anticipate and detect attacks.
- ▶ Ensuring compliance with data subject rights management and SARs.

### Crisis management

- ▶ Providing urgent crisis management advice and implementing breach response.
- ▶ Drafting breach notifications to the ICO and data subjects.

- ▶ Managing breach response and IT forensic investigations under the protection of privilege.
- ▶ Advising on contractual and data subject liability and litigation risks.
- ▶ Taking legal action against hackers, including urgent injunctive relief. Blocking or removing stolen data published online.
- ▶ Taking legal action (across multiple jurisdictions) to recover data, identify wrongdoers and obtain information.
- ▶ Working with law enforcement across multiple jurisdictions.

### Post breach or attack

- ▶ Advising on regulatory reporting.
- ▶ Managing regulatory investigations, cross-border.
- ▶ Defending data subject litigation claims.
- ▶ Defending stakeholder or third party claims.
- ▶ Advising on changes to data governance and IT security to minimise future breaches.

We also equip our clients with cutting edge tools to combat cyberattacks and data breaches:

- ▶ The first of its kind, our **award-winning TW: detect** platform allows users to scan client websites for indicators of compromise and monitor the dark web.
- ▶ Our **TW: CyberResponse** app delivers quick, coordinated and effective advice in the event of a data breach, as well as practical assistance on breach management in the 0-4, 5-24 and 25-48 hour periods post discovery.

Armed with these ground-breaking tools and with our legal expertise at your disposal, you can be confident your data is safe from the threat posed by online predators.



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# Investigation



## Internal and external regulatory investigation

Are your current corporate governance practices leaving your business exposed to investigations?

It's a question you need to ask yourself, as weak corporate governance can lead to external regulatory investigations.

We can help transform your existing corporate governance practices to prevent the need for such investigations. Our corporate, crime and fraud experts can train you to identify potential issues internally before they become a public, legal or regulatory challenge.

In circumstances where an investigation proves unavoidable, our experts excel at carrying out internal investigations under the protection of privilege or when dealing with multiple authorities across numerous jurisdictions during external investigations, allowing us to guide you at every stage of proceedings.

Our approach to external regulatory investigations is structured around three key pillars:

### Prevent

The best way to manage risks posed by internal or external investigation is to make sure one never needs to be undertaken. To that end, our experts:

- ▶ Conduct risk assessments.
- ▶ Implement correct policies and procedures.
- ▶ Provide training.
- ▶ Obtain regulatory authorisations.

### Detect

Where wrongdoing may have taken place, we can:

- ▶ Conduct an internal, independent investigation under the protection of privilege.
- ▶ Instruct forensics and other experts where necessary.
- ▶ Deal with disciplinary issues and protection of whistle-blowers.

### Respond

In the event an external investigation takes place, we will:

- ▶ Defend your company in regulatory, prosecutorial or civil proceedings.
- ▶ Take advice on enforcement of judgements.
- ▶ Conduct asset tracing.

### Protection from harassment

Our experts are also very experienced in protecting employees from harassment or online abuse and liaising with the police, or taking civil actions, to make it stop.



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# People



## Damage caused by exiting employees or regulatory failures

Gone are the days when you could dismiss HR issues as mere internal concerns. Today, such matters are subject to intense media and public interest – often driven by online platforms such as Glassdoor reviews or petitions that enable employees to air grievances in public first, before notifying HR – and you need to be prepared to cope with this increased scrutiny.

Are you confident you can adapt to rapid developments in the modern workplace, especially around high profile issues like #me too, worker status in the gig economy and pay-related regulations? If not, you're leaving your business vulnerable to negative publicity capable of irreparably damaging your corporate reputation.

That's why you should connect with our experienced team of employment law experts. Drawing upon our **Business 360 framework** – which identifies those areas of governance and personnel management most relevant to protecting your brand – we can offer legal advice that's truly unique.

Our lawyers can take care of everything from reviewing your existing HR practices to proposing new ones designed to keep you in line with current laws and regulations.

We'll also manage employee claims, regulatory investigations or audits and complaints, and help you to choose the best communications strategy when liaising with regulators, the media and your workforce.

More comprehensively, we can protect your business from reputational damage caused by exiting employees or regulatory failures in the following way:

### Review and change working practices

- ▶ Preparing for an HMRC wage audit and advice on right to work compliance, and for gender pay gap reporting and presentation of results.
- ▶ Reviewing working time pay and benefits practices (to help avoid criticism over working conditions), as well as reliance on casual labour, zero hours contracts and agency workers.

### Disputes

- ▶ Resolving matters or negotiating settlements.
- ▶ Advising on whistle blowing disputes, pay and governance disputes, and consultations with employees.
- ▶ Applying for injunctions to enforce confidentiality provisions, restrictive covenants, anonymity orders or reporting restrictions.
- ▶ Dealing with regulatory authorities.

### Litigation and regulators

Managing both the legal and reputational risks arising from all forms of public dispute, including:

- ▶ Employment tribunal claims for unfair dismissal or discrimination.
- ▶ High Court proceedings over the dispute of restrictive covenants.
- ▶ Regulatory complaints, such as HMRC investigations.



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# Safety



## Safety issues leading to regulatory or civil action

A defective product can destroy your brand. So when you're launching a new product in the market, it's vital that you have access to quality legal advice right from the start.

It doesn't matter whether you're an online retail start-up or an established player: it's essential that you're across any potential safety-related product compliance issues that may arise pre-launch. You'll also want to have an expert team on hand post-launch to monitor products and advise, in the event of a defective product-related crisis.

That's where our lawyers can help. Our team advises businesses before, during and after a product launch. We'll help you to safeguard your brand's reputation at every step along the way, by providing:

### Pre-launch product compliance advice

Prior to your product launch we'll advise on:

- ▶ Testing and assessments when bringing a new product to market.
- ▶ Specific and general regulatory requirements.
- ▶ Compliance and labelling, product technology and running your online businesses.

### Protection during a product crisis

Should a product crisis break out, our experts can:

- ▶ Manage defective product incidents or regulatory failures.
- ▶ Draft communications to customers and markets.
- ▶ Advise on:
  - product liability insurance and notification issues
  - testing, tracing and vulnerable consumers
  - safety issues, risk assessments, and corrective action including recalls
  - civil and criminal actions exposure.

### Litigation and investigations

If you find yourself engaged in legal proceedings or subject to investigation, our expertise covers:

- ▶ Mitigating or defending product liability litigation (including crossborder).
- ▶ Defending consumer/third party claims.
- ▶ Defending and managing regulatory investigations and enforcement actions.
- ▶ Advising on concurrent criminal liability issues, directors' duties and sanctions.
- ▶ Anticipating and planning for publicity risk arising from traditional and social media, or from coroners' hearings.



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# Activism



## Shareholder activism forcing change or destabilising companies

There are many different breeds of shareholder activist, but they all share a common goal: to effect change through pressuring boards. Are you prepared to deal with that pressure, should it arise?

A key challenge you face when confronted by shareholder activists is that their motivations, strategies, styles and tactics vary. What's more, their demeanour can range from passive to openly hostile, which means that there is no 'one size fits all' solution.

That's why the best way to counter shareholder activists is with confident, tailored legal advice that protects and retains your strong negotiating position. We can advise you on how to anticipate and manage the threats shareholder activists can pose, using our practical checklist:

### Prepare

- ▶ Know your activist – establish who they are, what they want and understand their track record.
- ▶ Get ahead of the activist – engage advisers to identify and analyse weaknesses.
- ▶ Develop a shareholder activism plan built on clear legal advice.
- ▶ Keep communications on track and avoid unhelpful responses by utilising advanced communications techniques.

### Engage

- ▶ Monitor the shareholder register – check for known activists buying in, or existing shareholders increasing holdings.
- ▶ Request that shareholders acting via nominee companies with over 3% identify the ultimate beneficial owner.

- ▶ Engage with shareholders to prevent or defuse a public battle with an activist.
- ▶ Allow shareholders to voice their concerns or to table resolutions at meetings and negotiate via open dialogue.
- ▶ Get 'buy in' from your stakeholders.
- ▶ Create communications and media plans with clear, focussed messages.

### Defend:

- ▶ In the short term, analyse proposed resolutions tabled by activists:
  - what is the nature of the proposal?
  - can it be validly tabled under the CA 2006 or the articles?
  - have the relevant powers been delegated to the board?
  - what are the statutory time limits?
  - is the requisition in the correct form?
- ▶ In the longer term, consider tabling counter proposals in defence.
- ▶ Circulate a statement to shareholders to garner support.
- ▶ Avoid aggressive steps which could be seen as stifling legitimate challenge or debate.



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# Brand



## Brand damage caused by competitors, infringers and counterfeiters

Your brand is unique, distinctive and recognisable – that's why it stands out in the marketplace. That's also what makes it worth protecting from potential threats or reputational damage.

To safeguard your brand, you need to have a cost-effective legal strategy in place, which our experts can provide. Here's how we can help:

### Protection pre-launch

- ▶ Overseeing new brand clearance and registration in the relevant jurisdictions to avoid infringing pre-existing rights.
- ▶ Considering language and translation issues and negative connotations.
- ▶ Filing applications to register early, to secure stronger rights.

### Exploitation

- ▶ Maximising brand value via commercial use, sale, transfer, licence or endorsement.
- ▶ Negotiating and drafting brand licences, franchises and other commercial agreements.
- ▶ Ensuring all advertising campaigns and technologies are compliant.

### Enforcement

- ▶ Anticipating and addressing threats to your brand:
  - infringement
  - brand dilution

- counterfeiting, grey imports, parallel trade
- third party internet keywords
- domain names, cyber-squatting
- company names
- comparative advertising
- design copies and look-alikes.
- ▶ Implementing proactive strategies to detect threats.
- ▶ Threatening legal action against infringers where appropriate, and negotiating favourable, long lasting settlements.
- ▶ Decisively taking cost effective legal action to enforce intellectual property rights where there is no other option.
- ▶ Blocking injunctions and delisting search results.
- ▶ Managing and defending advertising and ASA complaints.



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